Received: April 2, 2018
IURC 30-Day Filing No.: 50122
Indiana Utility Regulatory Commission

NiSource
150 West Market Street, Suite 600
Indianapolis, IN 46204

April 2, 2018

Mary M. Becerra
Secretary to the Commission
Indiana Utility Regulatory Commission
101 West Washington Street
Suite 1500 East
Indianapolis, Indiana 46204

RE: NIPSCO's 30-Day Administrative Filing No. 50122

Dear Ms. Becerra:

Northern Indiana Public Service Company LLC ("NIPSCO") hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the "Objectors") to NIPSCO's Thirty Day Administrative Filing (the "Filing") for Rider 778. The Filing has been assigned the tracking number 50122 by the Indiana Utility Regulatory Commission ("Commission"). The Filing was made by NIPSCO to comply with 170 IAC 4-4.1-10 ("Section 10"). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a cogeneration facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c) through 9(d).

The Objectors do not object to the Filing on the basis that the energy and capacity rates are not derived from the appropriate application of Sections 8(a) or 9(c) through 9(d) or otherwise fail to comply with the requirements of Section 10. Instead, the Objectors contend the Filing is "incomplete and violates applicable law" because NIPSCO (a) did not submit a standard contract pursuant to 170 IAC 4-4.1-11 and (b) does not include avoided cost information the Objectors imply must be included in the Filing by 18 CFR § 292.302(b). The Objectors' contentions misconstrue the obligations imposed on NIPSCO. Section 10 does not require NIPSCO to include a standard contract with its annual update to the rates for energy and capacity purchases from a cogeneration facility and no other provisions of the Indiana regulations require such a submission. Neither does Section 10 require NIPSCO to submit rates that comply with 18 C.F.R. § 292.302(b) as part of the Section 10 filing. Consequently, the Filing does not violate applicable

law, is not incomplete and there is no permissible basis identified by the Objectors to object to the Filing.

NIPSCO Is Not Required To Submit A Standard Contract

NIPSCO submitted the Filing to comply with Section 10. Objectors do not refer or site to any provision in Section 10 requiring NIPSCO to submit a standard offer contract when submitting its standard offer rates for purchase of energy and capacity each February 28. Indeed, no provision in Section 10 requires a standard offer contract to be submitted with this annual filing. Since Section 10 does not require a standard contract, no credible objection can be raised to a Section 10 filing on the basis that a standard contract was not included in the filing.

170 IAC 4-4.1-11 ("Section 11") does require submission of a standard offer contract, but Objectors ignore the specific language of the regulation making clear that a generating electric utility is not required to annually submit a standard offer contract with each filing made under Section 10:

> Sec. 11. (a) Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission's thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility's purchase of energy or capacity or both.

The submission of these standard offer contracts was a one-time requirement that was required to have been performed within sixty (60) days of the effective date of the rule. NIPSCO complied with this requirement by submitting a copy of its standard form agreement at the time the rule was adopted. Nothing further is required by Sections 10 or 11 with respect to this standard form contract.

The Objectors also state they were unable to locate NIPSCO's standard contract and that NIPSCO did not provide it upon request. However, the Objectors' ability to locate the contract has no bearing on the Filing's compliance with Section 10. Although the Objectors state that they contacted Tim Caister and were informed by him that there was no standard contract, Mr. Caister has no recollection of such a conversation, nor was the undersigned able to find anyone at NIPSCO who was asked for a copy of the standard contract in the recent past. In fact, the first contact from the Objectors of which the undersigned is aware was

on the Monday after the objection was filed. Attached to this letter is a copy of the 1985 standard contract. To the best of the undersigned's knowledge, no customer has requested service pursuant to this form contract in the past 8 years and in fact, while NIPSCO has customers receiving compensation pursuant to Rider 778 or pursuant to its Feed In Tariff offerings, all of those agreements were approved either in docketed commission proceedings and/or through thirty day filings, all of which are publicly available. Notwithstanding the affidavits attached to Objectors' objection, as previously stated NIPSCO already has entered into contracts. F or example, Mr. Straeter's affidavit fails to note the existence of NIPSCO's feed in tariff. Mr. Kliewer's affidavit also fails to mention NIPSCO's feed in tariff or why his project is not eligible for consideration for that treatment.

At bottom, the Objectors contention that "lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana," is not relevant to NIPSCO's compliance with the thirty day filing rules.

NIPSCO's Section 10 Filing Need Not Comply With 18 CFR §292.302(b)

Similarly, the Objectors' contention that the Filing, which was made pursuant to Section 10, does not include the avoided cost information required by 18 CFR § 292.302(b) provides no legitimate basis to object to the Filing. NIPSCO was not submitting the Filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, NIPSCO has complied with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP") which was filed on November 1, 2016. The IRP evaluates NIPSCO's planned capacity additions over at least 10 years and establishes the cost of capacity additions.

The basis for Objectors' objection to NIPSCO's Filing is without merit. The Filing is neither incomplete nor in violation of applicable law. For these reasons, NIPSCO's Filing should be presented to the Commission for consideration.

Initiation Of a Statewide Docket To Investigate PURPA Implementation Is Not Appropriate At This Time

Objectors' true purpose for their objection appears to be the initiation of a statewide docket to investigate Indiana's implementation of the Public Utilities Regulatory Policy Act ("PURPA"). This is not a legitimate basis for objecting to the Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission's 30-day filing procedures to avoid lengthy proceedings considering them.

Apart from Objectors' misuse of the objection provision of the 30-day filing procedure, now is not the time for Indiana to initiate a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the Federal Energy Regulatory Commission ("FERC") in Docket No. AD16-16. *See* Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).[1] FERC's Chairman, Neil Chatterjee, has explained the purpose of this investigation:

> The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).[2] Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers before the H. Energy and Commerce S. Comm.*[3] Legislation has been introduced in the House of Representatives to modernize PURPA. H.R. 4476, 115th Congress (2015).[4] Given Congressional and FERC investigations into the need to update PURPA, any inquiry in

---

1 Available at https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf.

2 Available at https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205.

3 Available at https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/.

4 Available at https://www.congress.gov/bill/115th-congress/house-bill/4476/text.

Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

For the reasons set forth herein, NIPSCO's Filing should be presented to the Commission for consideration.

Sincerely,

Claudia J. Earls

THIS DOCUMENT IS A STANDARD FORM
PREPARED IN COMPLIANCE WITH 170 IAC 4-4.1-11.
IT IS NOT INTENDED AND SHOULD NOT BE CONSTRUED AS AN
OFFER TO PURCHASE CAPACITY AND ENERGY GENERATED BY
A SPECIFIC QUALIFYING FACILITY.
NIPSCO RESERVES THE RIGHT TO MAKE MODIFICATIONS OR
REVISIONS TO THIS STANDARD DOCUMENT, SUBJECT TO THE
REVIEW AND APPROVAL OF THE PUBLIC SERVICE COMMISSION OF INDIANA.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

STANDARD TERMS AND CONDITIONS

For Purchase Of

CAPACITY AND ENERGY

From

QUALIFYING FACILITIES

June 4, 1985

COGENERATION AGREEMENT

This Agreement, entered into this _____ day of _____, 19 __, between _____, a _____, hereinafter called the "Qualifying Facility" and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation, hereinafter called the "Company," WITNESSETH:

STATUS OF QUALIFYING FACILITY

The qualifying facility owns a cogeneration and/or small power production facility which qualifies under the Order of the Pubic Service Commission of Indiana in Cause No. 37494. The qualifying facility wishes to sell, and the Company wishes to purchases electric power from the qualifying facility.

AMOUNT OF SALE AND PURCHASE

The qualifying facility agrees to sell and deliver and the Company agrees to purchase and accept delivery of the energy or energy and capacity as indicated below:

1. ENERGY _____ Kwh per Month

2. CAPACITY _____ Kw

CONTRACT TERM

The qualifying facility shall begin to supply electric service hereunder on or about _____, 19 __, and this contract shall then continue in effect for an initial term ending _____, 19 __, and from year to year thereafter unless cancelled by either party giving to the other not less than sixty days' prior written notice of the termination thereof at the expiration of the initial term or, at the end of the yearly period first occurring after the giving of such notice.

PAYMENT CONDITIONS

The Company agrees to pay the qualifying facility within 15 days from the date of bills issued monthly by the qualifying facility for all electric service supplied hereunder in accordance with the schedule of rates for such service applicable at the time such service is supplied.

APPLICABILITY OF RATE SCHEDULE

This contract is in accordance with the present current schedule of rates on file with, and approved by, the Public Service Commission of Indiana, which rates are subject to change as provided by law. In case such rates are decreased, the qualifying facility may cancel this contract by giving written notice thereof at any time prior to 60 days after the rate decrease becomes effective. Electric service supplied after such lower rates become effective shall be taken and paid for at such decreased rates.

The terms, provisions and conditions of the rate schedule applicable to the electric service supplied hereunder are made a part of this contract, and shall be binding upon the parties hereto.

The Company's rate schedule for purchases from cogeneration and small power production facilities applicable at the date of this contract to the electric service supplied hereunder is, by reference thereto, hereby made a part hereof, and the Customer acknowledges receipt of a copy of the same.

INTERCONNECTION TERM AND CONDITIONS

The qualifying facility shall reimburse the Company for all interconnection costs the Company has reasonably incurred, and the Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by the qualifying facility and located on an outside wall of the qualifying facility's building or at a point

satisfactory to the Company. The qualifying facility shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by the Company for safe, efficient and reliable operation in parallel to the Company's system. The qualifying facility shall bear full responsibility for the installation and safe operation of this equipment. Breakers capable of isolating the qualifying facility from the Company shall at all times be immediately accessible to the Company. The Company may isolate any qualifying facility at its own discretion if the Company believes continued parallel operation with the qualifying facility creates or contributes to a system emergency.

All wiring and other electric equipment installed by the qualifying facility shall be maintained by the qualifying facility at all times is conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from the Company shall be permitted to inspect qualifying facility's wiring and apparatus and the Company may transmit his recommendations in connection with any such inspection to the qualifying facility, but nothing herein contained shall mean, or be construed to mean, that the Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on the qualifying facility's premises.

METERING TERMS AND CONDITIONS

Subject to the provisions of the rate schedule applicable at the time of the service, electric service to be used under the terms of this contract shall be measured, as to maximum demand, energy and power factors by meters to be installed by the Company on or near the premises of the qualifying facility. The qualifying facility hereby agrees to provide

suitable electric connections for such meters and suitable housing for the same, and upon the registration of these meters, all bills other than bills for the minimum payments shall be calculated.

The Company shall at all times have the right to inspect and test meters and if found defective to repair, or replace them at its option. Such meters shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Public Service Commission of Indiana. At the qualifying facility's request, the Company shall inspect and test such meters once each yearly period.

The Company shall repair and re-test or replace a defective meter within a reasonable time. During the time there is no meter in service, it shall be assumed that the power delivered is the same as the delivery of power of the qualifying facility during similar periods of the qualifying facility's operations.

In case of impaired or defective service, the qualifying facility shall immediately give notice to the Company by telephone, confirming such notice in writing on same day notice is given.

INDEMNIFICATION

The Company and the qualifying facility shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification

under this provision, the other party shall defend any suit asserting a claim covered by this provision. If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action.

FORCE MAJEURE

Neither the Company nor the qualifying facility shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy hereunder due to, occasioned by or in consequence of, any of the following causes or contingencies, viz: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or

quarantine. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

FAILURES TO PERFORM

The parties agree that the amount of the capacity payment which the Company is to make to the qualifying facility is based on the agreed value to the Company of the qualifying facility's performance of its obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event the Company does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by the qualifying facility as specified in this Agreement, (1) the Company shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the actual damages to the Company resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, the qualifying facility

shall refund to the Company the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to the Company.

Except in the event of Force Majeure as defined in this Agreement, if, within, any twelve-month period during the term of this Agreement ending on the anniversary date of the date of the qualifying facility first provided capacity to the Company under this Agreement, the qualifying facility fails to provide the Company with the capacity specified in this Agreement, the capacity for which the qualifying facility shall be entitled to capacity payments during the subsequent twelve-month period ("the probationary period") shall be reduced to the capacity provided during the prior twelve-month period. If, during the probationary period, the qualifying facility provides the capacity specified in this Agreement, the Company, within thirty days following the end of the probationary period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the probationary period, the qualifying facility again fails to provide the capacity specified in this Agreement, the Company may permanently reduce the capacity purchased from the qualifying facility for the remainder of the term of this Agreement. Such causes or contingencies affecting performance shall not relieve the Company nor the qualifying facility of liability in the event of its concurring negligence or in the event of failure of either to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies or any thereof relieve either from its obligation to pay amounts due hereunder during such interruption or suspension of service.

INTERRUPTION OR CURTAILMENT OF PURCHASE

The Company reserves the right to interrupt purchase at any time when necessary to make emergency repairs. For the purpose of making other than emergency repairs, the Company reserves the right to disconnect the qualifying facility's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by the qualifying facility and the Company, provided forty-eight (48) hours' notification previous to the hour of cut-off is given the qualifying facility of such intention.

All terms and stipulations made or agreed to by the parties in relation to said electric service are completely expressed and merged in this contract, and no previous promises, representations or agreements made by the Company's officers or agents, shall be binding on the Company, and no previous promises, representations or agreements made by the qualifying facility's officers or agents, shall be binding on the qualifying facility, unless herein contained. The terms of this contract cannot be added to, varied or waived, either verbally or in writing, by any agent, solicitor, or other person connected with the Company, or connected with the qualifying facility, excepting executive officers of the Company and officers of the qualifying facility.

From and after the date when electric service is commenced under this contract, this contract shall supersede and terminate any and all existing agreements between the parties hereto under the terms of which the qualifying facility furnishes and the Company receives electric service at the premises covered by this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

This Agreement shall not be binding upon the Company until approved by the president or a vice-president of the Company and attested by the secretary or an assistant secretary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in duplicate the day and year first above written.

Attest:

By _____
Assistant Secretary

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By _____
Its _____

Attest:

_____
(Qualifying Facility)

By _____
_____ Secretary

By _____
Its _____